

1 for the record of the reasons for a decision under
2 this paragraph.

3 “(2) CERTIORARI TO THE SUPREME COURT.—
4 The Government may file a petition for a writ of
5 certiorari for review of a decision of the Court of Re-
6 view issued under paragraph (1). The record for
7 such review shall be transmitted under seal to the
8 Supreme Court of the United States, which shall
9 have jurisdiction to review such decision.”

10 **“SEC. 705. JOINT APPLICATIONS AND CONCURRENT AU-**
11 **THORIZATIONS.**

12 “(a) JOINT APPLICATIONS AND ORDERS.—If an ac-
13 quisition targeting a United States person under section
14 703 or 704 is proposed to be conducted both inside and
15 outside the United States, a judge having jurisdiction
16 under section 703(a)(1) or 704(a)(1) may issue simulta-
17 neously, upon the request of the Government in a joint
18 application complying with the requirements of sections
19 703(b) and 704(b), orders under sections 703(c) and
20 704(c), as appropriate.

21 “(b) CONCURRENT AUTHORIZATION.—If an order
22 authorizing electronic surveillance or physical search has
23 been obtained under section 105 or 304, the Attorney
24 General may authorize, for the effective period of that
25 order, without an order under section 703 or 704, the tar-

1 getting of that United States person for the purpose of ac-
2 quiring foreign intelligence information while such person
3 is reasonably believed to be located outside the United
4 States.

5 **"SEC. 706. USE OF INFORMATION ACQUIRED UNDER TITLE**

6 **VII.**

7 "(a) INFORMATION ACQUIRED UNDER SECTION
8 702.—Information acquired from an acquisition con-
9 ducted under section 702 shall be deemed to be informa-
10 tion acquired from an electronic surveillance pursuant to
11 title I for purposes of section 106, except for the purposes
12 of subsection (j) of such section.

13 "(b) INFORMATION ACQUIRED UNDER SECTION
14 703.—Information acquired from an acquisition con-
15 ducted under section 703 shall be deemed to be informa-
16 tion acquired from an electronic surveillance pursuant to
17 title I for purposes of section 106.

18 **"SEC. 707. CONGRESSIONAL OVERSIGHT.**

19 "(a) SEMIANNUAL REPORT.—Not less frequently
20 than once every 6 months, the Attorney General shall fully
21 inform, in a manner consistent with national security, the
22 congressional intelligence committees and the Committees
23 on the Judiciary of the Senate and the House of Rep-
24 resentatives, consistent with the Rules of the House of
25 Representatives, the Standing Rules of the Senate, and

1 Senate Resolution 400 of the 94th Congress or any suc-
2 cessor Senate resolution, concerning the implementation
3 of this title.

4 “(b) CONTENT.—Each report under subsection (a)
5 shall include—

6 “(1) with respect to section 702—

7 “(A) any certifications submitted in ac-
8 cordance with section 702(g) during the report-
9 ing period;

10 “(B) with respect to each determination
11 under section 702(c)(2), the reasons for exer-
12 cising the authority under such section;

13 “(C) any directives issued under section
14 702(h) during the reporting period;

15 “(D) a description of the judicial review
16 during the reporting period of such certifi-
17 cations and targeting and minimization proce-
18 dures adopted in accordance with subsections
19 (d) and (e) of section 702 and utilized with re-
20 spect to an acquisition under such section, in-
21 cluding a copy of an order or pleading in con-
22 nection with such review that contains a signifi-
23 cant legal interpretation of the provisions of
24 section 702;

1 “(E) any actions taken to challenge or en-
2 force a directive under paragraph (4) or (5) of
3 section 702(h);

4 “(F) any compliance reviews conducted by
5 the Attorney General or the Director of Na-
6 tional Intelligence of acquisitions authorized
7 under section 702(a);

8 “(G) a description of any incidents of non-
9 compliance—

10 “(i) with a directive issued by the At-
11 torney General and the Director of Na-
12 tional Intelligence under section 702(h),
13 including incidents of noncompliance by a
14 specified person to whom the Attorney
15 General and Director of National Intel-
16 ligence issued a directive under section
17 702(h); and

18 “(ii) by an element of the intelligence
19 community with procedures and guidelines
20 adopted in accordance with subsections
21 (d), (e), and (f) of section 702; and

22 “(H) any procedures implementing section
23 702;

24 “(2) with respect to section 703—

1 “(A) the total number of applications made
2 for orders under section 703(b);

3 “(B) the total number of such orders—

4 “(i) granted;

5 “(ii) modified; and

6 “(iii) denied; and

7 “(C) the total number of emergency acqui-
8 sitions authorized by the Attorney General
9 under section 703(d) and the total number of
10 subsequent orders approving or denying such
11 acquisitions; and

12 “(3) with respect to section 704—

13 “(A) the total number of applications made
14 for orders under section 704(b);

15 “(B) the total number of such orders—

16 “(i) granted;

17 “(ii) modified; and

18 “(iii) denied; and

19 “(C) the total number of emergency acqui-
20 sitions authorized by the Attorney General
21 under section 704(d) and the total number of
22 subsequent orders approving or denying such
23 applications.

1 **“SEC. 708. SAVINGS PROVISION.**

2 “Nothing in this title shall be construed to limit the
3 authority of the Government to seek an order or author-
4 ization under, or otherwise engage in any activity that is
5 authorized under, any other title of this Act.”.

6 (b) TABLE OF CONTENTS.—The table of contents in
7 the first section of the Foreign Intelligence Surveillance
8 Act of 1978 (50 U.S.C. 1801 et. seq.) is amended—

9 (1) by striking the item relating to title VII;

10 (2) by striking the item relating to section 701;

11 and

12 (3) by adding at the end the following:

“TITLE VII—ADDITIONAL PROCEDURES REGARDING CERTAIN
PERSONS OUTSIDE THE UNITED STATES

“Sec. 701. Definitions.

“Sec. 702. Procedures for targeting certain persons outside the United States
other than United States persons.

“Sec. 703. Certain acquisitions inside the United States targeting United
States persons outside the United States.

“Sec. 704. Other acquisitions targeting United States persons outside the
United States.

“Sec. 705. Joint applications and concurrent authorizations.

“Sec. 706. Use of information acquired under title VII.

“Sec. 707. Congressional oversight.

“Sec. 708. Savings provision.”.

13 (c) TECHNICAL AND CONFORMING AMENDMENTS.—

14 (1) TITLE 18, UNITED STATES CODE.—Section
15 2511(2)(a)(ii)(A) of title 18, United States Code, is
16 amended by inserting “or a court order pursuant to
17 section 704 of the Foreign Intelligence Surveillance
18 Act of 1978” after “assistance”.

1 (2) FOREIGN INTELLIGENCE SURVEILLANCE
2 ACT OF 1978.—Section 601(a)(1) of the Foreign In-
3 telligence Surveillance Act of 1978 (50 U.S.C.
4 1871(a)(1)) is amended—

5 (A) in subparagraph (C), by striking
6 “and”; and

7 (B) by adding at the end the following new
8 subparagraphs:

9 “(E) acquisitions under section 703; and

10 “(F) acquisitions under section 704;”.

11 **SEC. 102. STATEMENT OF EXCLUSIVE MEANS BY WHICH**
12 **ELECTRONIC SURVEILLANCE AND INTERCEP-**
13 **TION OF CERTAIN COMMUNICATIONS MAY BE**
14 **CONDUCTED.**

15 (a) STATEMENT OF EXCLUSIVE MEANS.—Title I of
16 the Foreign Intelligence Surveillance Act of 1978 (50
17 U.S.C. 1801 et seq.) is amended by adding at the end
18 the following new section:

19 “STATEMENT OF EXCLUSIVE MEANS BY WHICH ELEC-
20 TRONIC SURVEILLANCE AND INTERCEPTION OF CER-
21 TAIN COMMUNICATIONS MAY BE CONDUCTED

22 “SEC. 112. (a) Except as provided in subsection (b),
23 the procedures of chapters 119, 121, and 206 of title 18,
24 United States Code, and this Act shall be the exclusive
25 means by which electronic surveillance and the intercep-

1 tion of domestic wire, oral, or electronic communications
2 may be conducted.

3 “(b) Only an express statutory authorization for elec-
4 tronic surveillance or the interception of domestic wire,
5 oral, or electronic communications, other than as an
6 amendment to this Act or chapters 119, 121, or 206 of
7 title 18, United States Code, shall constitute an additional
8 exclusive means for the purpose of subsection (a).”.

9 (b) OFFENSE.—Section 109(a) of the Foreign Intel-
10 ligence Surveillance Act of 1978 (50 U.S.C. 1809(a)) is
11 amended by striking “authorized by statute” each place
12 it appears and inserting “authorized by this Act, chapter
13 119, 121, or 206 of title 18, United States Code, or any
14 express statutory authorization that is an additional exclu-
15 sive means for conducting electronic surveillance under
16 section 112.”; and

17 (c) CONFORMING AMENDMENTS.—

18 (1) TITLE 18, UNITED STATES CODE.—Section
19 2511(2)(a) of title 18, United States Code, is
20 amended by adding at the end the following:

21 “(iii) If a certification under subpara-
22 graph (ii)(B) for assistance to obtain for-
23 eign intelligence information is based on
24 statutory authority, the certification shall
25 identify the specific statutory provision and

1 shall certify that the statutory require-
2 ments have been met.”; and

3 (2) TABLE OF CONTENTS.—The table of con-
4 tents in the first section of the Foreign Intelligence
5 Surveillance Act of 1978 (50 U.S.C. 1801 et seq.)
6 is amended by inserting after the item relating to
7 section 111, the following new item:

“Sec. 112. Statement of exclusive means by which electronic surveillance and
interception of certain communications may be conducted.”.

8 **SEC. 103. SUBMITTAL TO CONGRESS OF CERTAIN COURT**
9 **ORDERS UNDER THE FOREIGN INTEL-**
10 **LIGENCE SURVEILLANCE ACT OF 1978.**

11 (a) INCLUSION OF CERTAIN ORDERS IN SEMIANNUAL
12 REPORTS OF ATTORNEY GENERAL.—Subsection (a)(5) of
13 section 601 of the Foreign Intelligence Surveillance Act
14 of 1978 (50 U.S.C. 1871) is amended by striking “(not
15 including orders)” and inserting “, orders,”.

16 (b) REPORTS BY ATTORNEY GENERAL ON CERTAIN
17 OTHER ORDERS.—Such section 601 is further amended
18 by adding at the end the following:

19 “(c) SUBMISSIONS TO CONGRESS.—The Attorney
20 General shall submit to the committees of Congress re-
21 ferred to in subsection (a)—

22 “(1) a copy of any decision, order, or opinion
23 issued by the Foreign Intelligence Surveillance Court
24 or the Foreign Intelligence Surveillance Court of Re-

1 view that includes significant construction or inter-
2 pretation of any provision of this Act, and any
3 pleadings, applications, or memoranda of law associ-
4 ated with such decision, order, or opinion, not later
5 than 45 days after such decision, order, or opinion
6 is issued; and

7 “(2) a copy of each such decision, order, or
8 opinion, and any pleadings, applications, or memo-
9 randa of law associated with such decision, order, or
10 opinion, that was issued during the 5-year period
11 ending on the date of the enactment of the FISA
12 Amendments Act of 2008 and not previously sub-
13 mitted in a report under subsection (a).

14 “(d) PROTECTION OF NATIONAL SECURITY.—The
15 Attorney General, in consultation with the Director of Na-
16 tional Intelligence, may authorize redactions of materials
17 described in subsection (c) that are provided to the com-
18 mittees of Congress referred to in subsection (a), if such
19 redactions are necessary to protect the national security
20 of the United States and are limited to sensitive sources
21 and methods information or the identities of targets.”

22 (c) DEFINITIONS.—Such section 601, as amended by
23 subsections (a) and (b), is further amended by adding at
24 the end the following:

25 “(e) DEFINITIONS.—In this section:

1 “(1) FOREIGN INTELLIGENCE SURVEILLANCE
2 COURT.—The term ‘Foreign Intelligence Surveillance
3 Court’ means the court established under section
4 103(a).

5 “(2) FOREIGN INTELLIGENCE SURVEILLANCE
6 COURT OF REVIEW.—The term ‘Foreign Intelligence
7 Surveillance Court of Review’ means the court estab-
8 lished under section 103(b).”.

9 **SEC. 104. APPLICATIONS FOR COURT ORDERS.**

10 Section 104 of the Foreign Intelligence Surveillance
11 Act of 1978 (50 U.S.C. 1804) is amended—

12 (1) in subsection (a)—

13 (A) by striking paragraphs (2) and (11);

14 (B) by redesignating paragraphs (3)
15 through (10) as paragraphs (2) through (9), re-
16 spectively;

17 (C) in paragraph (5), as redesignated by
18 subparagraph (B) of this paragraph, by striking
19 “detailed”;

20 (D) in paragraph (6), as redesignated by
21 subparagraph (B) of this paragraph, in the
22 matter preceding subparagraph (A)—

23 (i) by striking “Affairs or” and insert-
24 ing “Affairs,”; and

1 (ii) by striking “Senate—” and insert-
2 ing “Senate, or the Deputy Director of the
3 Federal Bureau of Investigation, if des-
4 ignated by the President as a certifying of-
5 ficial—”;

6 (E) in paragraph (7), as redesignated by
7 subparagraph (B) of this paragraph, by striking
8 “statement of” and inserting “summary state-
9 ment of”;

10 (F) in paragraph (8), as redesignated by
11 subparagraph (B) of this paragraph, by adding
12 “and” at the end; and

13 (G) in paragraph (9), as redesignated by
14 subparagraph (B) of this paragraph, by striking
15 “; and” and inserting a period;

16 (2) by striking subsection (b);

17 (3) by redesignating subsections (c) through (e)
18 as subsections (b) through (d), respectively; and

19 (4) in paragraph (1)(A) of subsection (d), as re-
20 designating by paragraph (3) of this subsection, by
21 striking “or the Director of National Intelligence”
22 and inserting “the Director of National Intelligence,
23 or the Director of the Central Intelligence Agency”.

1 **SEC. 105. ISSUANCE OF AN ORDER.**

2 (a) IN GENERAL.—Section 105 of the Foreign Intel-
3 ligence Surveillance Act of 1978 (50 U.S.C. 1805) is
4 amended—

5 (1) in subsection (a)—

6 (A) by striking paragraph (1); and

7 (B) by redesignating paragraphs (2)
8 through (5) as paragraphs (1) through (4), re-
9 spectively;

10 (2) in subsection (b), by striking “(a)(3)” and
11 inserting “(a)(2)”;

12 (3) in subsection (c)(1)—

13 (A) in subparagraph (D), by adding “and”
14 at the end;

15 (B) in subparagraph (E), by striking “;
16 and” and inserting a period; and

17 (C) by striking subparagraph (F);

18 (4) by striking subsection (d);

19 (5) by redesignating subsections (e) through (i)
20 as subsections (d) through (h), respectively;

21 (6) by amending subsection (e), as redesignated
22 by paragraph (5) of this section, to read as follows:

23 “(e)(1) Notwithstanding any other provision of this
24 title, the Attorney General may authorize the emergency
25 employment of electronic surveillance if the Attorney Gen-
26 eral—

1 “(A) reasonably determines that an emergency
2 situation exists with respect to the employment of
3 electronic surveillance to obtain foreign intelligence
4 information before an order authorizing such surveil-
5 lance can with due diligence be obtained;

6 “(B) reasonably determines that the factual
7 basis for the issuance of an order under this title to
8 approve such electronic surveillance exists;

9 “(C) informs, either personally or through a
10 designee, a judge having jurisdiction under section
11 103 at the time of such authorization that the deci-
12 sion has been made to employ emergency electronic
13 surveillance; and

14 “(D) makes an application in accordance with
15 this title to a judge having jurisdiction under section
16 103 as soon as practicable, but not later than 7 days
17 after the Attorney General authorizes such surveil-
18 lance.

19 “(2) If the Attorney General authorizes the emer-
20 gency employment of electronic surveillance under para-
21 graph (1), the Attorney General shall require that the
22 minimization procedures required by this title for the
23 issuance of a judicial order be followed.

24 “(3) In the absence of a judicial order approving such
25 electronic surveillance, the surveillance shall terminate

1 when the information sought is obtained, when the appli-
2 cation for the order is denied, or after the expiration of
3 7 days from the time of authorization by the Attorney
4 General, whichever is earliest.

5 “(4) A denial of the application made under this sub-
6 section may be reviewed as provided in section 103.

7 “(5) In the event that such application for approval
8 is denied, or in any other case where the electronic surveil-
9 lance is terminated and no order is issued approving the
10 surveillance, no information obtained or evidence derived
11 from such surveillance shall be received in evidence or oth-
12 erwise disclosed in any trial, hearing, or other proceeding
13 in or before any court, grand jury, department, office,
14 agency, regulatory body, legislative committee, or other
15 authority of the United States, a State, or political sub-
16 division thereof, and no information concerning any
17 United States person acquired from such surveillance shall
18 subsequently be used or disclosed in any other manner by
19 Federal officers or employees without the consent of such
20 person, except with the approval of the Attorney General
21 if the information indicates a threat of death or serious
22 bodily harm to any person.

23 “(6) The Attorney General shall assess compliance
24 with the requirements of paragraph (5).”; and

25 (7) by adding at the end the following:

1 “(i) In any case in which the Government makes an
2 application to a judge under this title to conduct electronic
3 surveillance involving communications and the judge
4 grants such application, upon the request of the applicant,
5 the judge shall also authorize the installation and use of
6 pen registers and trap and trace devices, and direct the
7 disclosure of the information set forth in section
8 402(d)(2).”.

9 (b) CONFORMING AMENDMENT.—Section
10 108(a)(2)(C) of the Foreign Intelligence Surveillance Act
11 of 1978 (50 U.S.C. 1808(a)(2)(C)) is amended by striking
12 “105(f)” and inserting “105(e)”;

13 **SEC. 106. USE OF INFORMATION.**

14 Subsection (i) of section 106 of the Foreign Intel-
15 ligence Surveillance Act of 1978 (8 U.S.C. 1806) is
16 amended by striking “radio communication” and inserting
17 “communication”.

18 **SEC. 107. AMENDMENTS FOR PHYSICAL SEARCHES.**

19 (a) APPLICATIONS.—Section 303 of the Foreign In-
20 telligence Surveillance Act of 1978 (50 U.S.C. 1823) is
21 amended—

22 (1) in subsection (a)—

23 (A) by striking paragraph (2);

1 (B) by redesignating paragraphs (3)
2 through (9) as paragraphs (2) through (8), re-
3 spectively;

4 (C) in paragraph (2), as redesignated by
5 subparagraph (B) of this paragraph, by striking
6 “detailed”;

7 (D) in paragraph (3)(C), as redesignated
8 by subparagraph (B) of this paragraph, by in-
9 serting “or is about to be” before “owned”; and

10 (E) in paragraph (6), as redesignated by
11 subparagraph (B) of this paragraph, in the
12 matter preceding subparagraph (A)—

13 (i) by striking “Affairs or” and insert-
14 ing “Affairs,”; and

15 (ii) by striking “Senate—” and insert-
16 ing “Senate, or the Deputy Director of the
17 Federal Bureau of Investigation, if des-
18 ignated by the President as a certifying of-
19 ficial—”; and

20 (2) in subsection (d)(1)(A), by striking “or the
21 Director of National Intelligence” and inserting “the
22 Director of National Intelligence, or the Director of
23 the Central Intelligence Agency”.

1 (b) ORDERS.—Section 304 of the Foreign Intel-
2 ligence Surveillance Act of 1978 (50 U.S.C. 1824) is
3 amended—

4 (1) in subsection (a)—

5 (A) by striking paragraph (1);

6 (B) by redesignating paragraphs (2)
7 through (5) as paragraphs (1) through (4), re-
8 spectively; and

9 (C) in paragraph (2)(B), as redesignated
10 by subparagraph (B) of this paragraph, by in-
11 sserting “or is about to be” before “owned”; and
12 (2) by amending subsection (e) to read as fol-

13 lows:

14 “(e)(1) Notwithstanding any other provision of this
15 title, the Attorney General may authorize the emergency
16 employment of a physical search if the Attorney General—

17 “(A) reasonably determines that an emergency
18 situation exists with respect to the employment of a
19 physical search to obtain foreign intelligence infor-
20 mation before an order authorizing such physical
21 search can with due diligence be obtained;

22 “(B) reasonably determines that the factual
23 basis for issuance of an order under this title to ap-
24 prove such physical search exists;

1 “(C) informs, either personally or through a
2 designee, a judge of the Foreign Intelligence Surveil-
3 lance Court at the time of such authorization that
4 the decision has been made to employ an emergency
5 physical search; and

6 “(D) makes an application in accordance with
7 this title to a judge of the Foreign Intelligence Sur-
8 veillance Court as soon as practicable, but not more
9 than 7 days after the Attorney General authorizes
10 such physical search.

11 “(2) If the Attorney General authorizes the emer-
12 gency employment of a physical search under paragraph
13 (1), the Attorney General shall require that the minimiza-
14 tion procedures required by this title for the issuance of
15 a judicial order be followed.

16 “(3) In the absence of a judicial order approving such
17 physical search, the physical search shall terminate when
18 the information sought is obtained, when the application
19 for the order is denied, or after the expiration of 7 days
20 from the time of authorization by the Attorney General,
21 whichever is earliest.

22 “(4) A denial of the application made under this sub-
23 section may be reviewed as provided in section 103.

24 “(5) In the event that such application for approval
25 is denied, or in any other case where the physical search

1 is terminated and no order is issued approving the phys-
2 ical search, no information obtained or evidence derived
3 from such physical search shall be received in evidence or
4 otherwise disclosed in any trial, hearing, or other pro-
5 ceeding in or before any court, grand jury, department,
6 office, agency, regulatory body, legislative committee, or
7 other authority of the United States, a State, or political
8 subdivision thereof, and no information concerning any
9 United States person acquired from such physical search
10 shall subsequently be used or disclosed in any other man-
11 ner by Federal officers or employees without the consent
12 of such person, except with the approval of the Attorney
13 General if the information indicates a threat of death or
14 serious bodily harm to any person.

15 “(6) The Attorney General shall assess compliance
16 with the requirements of paragraph (5).”.

17 (c) CONFORMING AMENDMENTS.—The Foreign Intel-
18 ligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.)
19 is amended—

20 (1) in section 304(a)(4), as redesignated by
21 subsection (b) of this section, by striking
22 “303(a)(7)(E)” and inserting “303(a)(6)(E)”; and

23 (2) in section 305(k)(2), by striking
24 “303(a)(7)” and inserting “303(a)(6)”.

1 **SEC. 108. AMENDMENTS FOR EMERGENCY PEN REGISTERS**
2 **AND TRAP AND TRACE DEVICES.**

3 Section 403 of the Foreign Intelligence Surveillance
4 Act of 1978 (50 U.S.C. 1843) is amended—

5 (1) in subsection (a)(2), by striking “48 hours”
6 and inserting “7 days”; and

7 (2) in subsection (c)(1)(C), by striking “48
8 hours” and inserting “7 days”.

9 **SEC. 109. FOREIGN INTELLIGENCE SURVEILLANCE COURT.**

10 (a) **DESIGNATION OF JUDGES.**—Subsection (a) of
11 section 103 of the Foreign Intelligence Surveillance Act
12 of 1978 (50 U.S.C. 1803) is amended by inserting “at
13 least” before “seven of the United States judicial cir-
14 cuits”.

15 (b) **EN BANC AUTHORITY.**—

16 (1) **IN GENERAL.**—Subsection (a) of section
17 103 of the Foreign Intelligence Surveillance Act of
18 1978, as amended by subsection (a) of this section,
19 is further amended—

20 (A) by inserting “(1)” after “(a)”; and

21 (B) by adding at the end the following new
22 paragraph:

23 “(2)(A) The court established under this subsection
24 may, on its own initiative, or upon the request of the Gov-
25 ernment in any proceeding or a party under section 501(f)
26 or paragraph (4) or (5) of section 702(h), hold a hearing

1 or rehearing, en banc, when ordered by a majority of the
2 judges that constitute such court upon a determination
3 that—

4 “(i) en banc consideration is necessary to se-
5 cure or maintain uniformity of the court’s decisions;
6 or

7 “(ii) the proceeding involves a question of ex-
8 ceptional importance.

9 “(B) Any authority granted by this Act to a judge
10 of the court established under this subsection may be exer-
11 cised by the court en banc. When exercising such author-
12 ity, the court en banc shall comply with any requirements
13 of this Act on the exercise of such authority.

14 “(C) For purposes of this paragraph, the court en
15 banc shall consist of all judges who constitute the court
16 established under this subsection.”.

17 (2) CONFORMING AMENDMENTS.—The Foreign
18 Intelligence Surveillance Act of 1978 is further
19 amended—

20 (A) in subsection (a) of section 103, as
21 amended by this subsection, by inserting “(ex-
22 cept when sitting en banc under paragraph
23 (2))” after “no judge designated under this
24 subsection”; and

1 (B) in section 302(c) (50 U.S.C. 1822(c)),
2 by inserting “(except when sitting en banc)”
3 after “except that no judge”.

4 (c) STAY OR MODIFICATION DURING AN APPEAL.—
5 Section 103 of the Foreign Intelligence Surveillance Act
6 of 1978 (50 U.S.C. 1803) is amended—

7 (1) by redesignating subsection (f) as sub-
8 section (g); and

9 (2) by inserting after subsection (e) the fol-
10 lowing new subsection:

11 “(f)(1) A judge of the court established under sub-
12 section (a), the court established under subsection (b) or
13 a judge of that court, or the Supreme Court of the United
14 States or a justice of that court, may, in accordance with
15 the rules of their respective courts, enter a stay of an order
16 or an order modifying an order of the court established
17 under subsection (a) or the court established under sub-
18 section (b) entered under any title of this Act, while the
19 court established under subsection (a) conducts a rehear-
20 ing, while an appeal is pending to the court established
21 under subsection (b), or while a petition of certiorari is
22 pending in the Supreme Court of the United States, or
23 during the pendency of any review by that court.

1 “(2) The authority described in paragraph (1) shall
2 apply to an order entered under any provision of this
3 Act.”.

4 (d) **AUTHORITY OF FOREIGN INTELLIGENCE SUR-**
5 **VEILLANCE COURT.**—Section 103 of the Foreign Intel-
6 ligence Surveillance Act of 1978 (50 U.S.C. 1803), as
7 amended by this Act, is amended by adding at the end
8 the following:

9 “(i) Nothing in this Act shall be construed to reduce
10 or contravene the inherent authority of the court estab-
11 lished under subsection (a) to determine or enforce compli-
12 ance with an order or a rule of such court or with a proce-
13 dure approved by such court.”.

14 **SEC. 110. WEAPONS OF MASS DESTRUCTION.**

15 (a) **DEFINITIONS.**—

16 (1) **FOREIGN POWER.**—Subsection (a) of sec-
17 tion 101 of the Foreign Intelligence Surveillance Act
18 of 1978 (50 U.S.C. 1801(a)) is amended—

19 (A) in paragraph (5), by striking “persons;
20 or” and inserting “persons;”;

21 (B) in paragraph (6) by striking the period
22 and inserting “; or”; and

23 (C) by adding at the end the following new
24 paragraph:

1 “(7) an entity not substantially composed of
2 United States persons that is engaged in the inter-
3 national proliferation of weapons of mass destruc-
4 tion.”.

5 (2) AGENT OF A FOREIGN POWER.—Subsection
6 (b)(1) of such section 101 is amended—

7 (A) in subparagraph (B), by striking “or”
8 at the end;

9 (B) in subparagraph (C), by striking “or”
10 at the end; and

11 (C) by adding at the end the following new
12 subparagraphs:

13 “(D) engages in the international prolifera-
14 tion of weapons of mass destruction, or activi-
15 ties in preparation therefor; or

16 “(E) engages in the international prolifera-
17 tion of weapons of mass destruction, or activi-
18 ties in preparation therefor for or on behalf of
19 a foreign power; or”.

20 (3) FOREIGN INTELLIGENCE INFORMATION.—
21 Subsection (e)(1)(B) of such section 101 is amended
22 by striking “sabotage or international terrorism”
23 and inserting “sabotage, international terrorism, or
24 the international proliferation of weapons of mass
25 destruction”.

1 (4) WEAPON OF MASS DESTRUCTION.—Such
2 section 101 is amended by adding at the end the fol-
3 lowing new subsection:

4 “(p) ‘Weapon of mass destruction’ means—

5 “(1) any explosive, incendiary, or poison gas de-
6 vice that is designed, intended, or has the capability
7 to cause a mass casualty incident;

8 “(2) any weapon that is designed, intended, or
9 has the capability to cause death or serious bodily
10 injury to a significant number of persons through
11 the release, dissemination, or impact of toxic or poi-
12 sonous chemicals or their precursors;

13 “(3) any weapon involving a biological agent,
14 toxin, or vector (as such terms are defined in section
15 178 of title 18, United States Code) that is de-
16 signed, intended, or has the capability to cause
17 death, illness, or serious bodily injury to a signifi-
18 cant number of persons; or

19 “(4) any weapon that is designed, intended, or
20 has the capability to release radiation or radioac-
21 tivity causing death, illness, or serious bodily injury
22 to a significant number of persons.”.

23 (b) USE OF INFORMATION.—

24 (1) IN GENERAL.—Section 106(k)(1)(B) of the
25 Foreign Intelligence Surveillance Act of 1978 (50

1 U.S.C. 1806(k)(1)(B)) is amended by striking “sab-
2 otage or international terrorism” and inserting “sab-
3 otage, international terrorism, or the international
4 proliferation of weapons of mass destruction”.

5 (2) PHYSICAL SEARCHES.—Section
6 305(k)(1)(B) of such Act (50 U.S.C. 1825(k)(1)(B))
7 is amended by striking “sabotage or international
8 terrorism” and inserting “sabotage, international
9 terrorism, or the international proliferation of weap-
10 ons of mass destruction”.

11 (c) TECHNICAL AND CONFORMING AMENDMENTS.—
12 The Foreign Intelligence Surveillance Act of 1978 is fur-
13 ther amended—

14 (1) in paragraph (2) of section 105(d) (50
15 U.S.C. 1805(d)), as redesignated by section
16 105(a)(5) of this Act, by striking “section 101(a)
17 (5) or (6)” and inserting “paragraph (5), (6), or (7)
18 of section 101(a)”;

19 (2) in section 301(1) (50 U.S.C. 1821(1)), by
20 inserting “weapon of mass destruction,” after “per-
21 son,”; and

22 (3) in section 304(d)(2) (50 U.S.C.
23 1824(d)(2)), by striking “section 101(a) (5) or (6)”
24 and inserting “paragraph (5), (6), or (7) of section
25 101(a)”.

1 **TITLE II—PROTECTIONS FOR**
2 **ELECTRONIC COMMUNICA-**
3 **TION SERVICE PROVIDERS**

4 **SEC. 201. PROCEDURES FOR IMPLEMENTING STATUTORY**
5 **DEFENSES UNDER THE FOREIGN INTEL-**
6 **LIGENCE SURVEILLANCE ACT OF 1978.**

7 The Foreign Intelligence Surveillance Act of 1978
8 (50 U.S.C. 1801 et seq.), as amended by section 101, is
9 further amended by adding at the end the following new
10 title:

11 **“TITLE VIII—PROTECTION OF**
12 **PERSONS ASSISTING THE**
13 **GOVERNMENT**

14 **“SEC. 801. DEFINITIONS.**

15 “In this title:

16 “(1) **ASSISTANCE.**—The term ‘assistance’
17 means the provision of, or the provision of access to,
18 information (including communication contents,
19 communications records, or other information relat-
20 ing to a customer or communication), facilities, or
21 another form of assistance.

22 “(2) **CIVIL ACTION.**—The term ‘civil action’ in-
23 cludes a covered civil action.

1 “(3) CONGRESSIONAL INTELLIGENCE COMMIT-
2 TEES.—The term ‘congressional intelligence commit-
3 tees’ means—

4 “(A) the Select Committee on Intelligence
5 of the Senate; and

6 “(B) the Permanent Select Committee on
7 Intelligence of the House of Representatives.

8 “(4) CONTENTS.—The term ‘contents’ has the
9 meaning given that term in section 101(n).

10 “(5) COVERED CIVIL ACTION.—The term ‘cov-
11 ered civil action’ means a civil action filed in a Fed-
12 eral or State court that—

13 “(A) alleges that an electronic communica-
14 tion service provider furnished assistance to an
15 element of the intelligence community; and

16 “(B) seeks monetary or other relief from
17 the electronic communication service provider
18 related to the provision of such assistance.

19 “(6) ELECTRONIC COMMUNICATION SERVICE
20 PROVIDER.—The term ‘electronic communication
21 service provider’ means—

22 “(A) a telecommunications carrier, as that
23 term is defined in section 3 of the Communica-
24 tions Act of 1934 (47 U.S.C. 153);

1 “(B) a provider of electronic communica-
2 tion service, as that term is defined in section
3 2510 of title 18, United States Code;

4 “(C) a provider of a remote computing
5 service, as that term is defined in section 2711
6 of title 18, United States Code;

7 “(D) any other communication service pro-
8 vider who has access to wire or electronic com-
9 munications either as such communications are
10 transmitted or as such communications are
11 stored;

12 “(E) a parent, subsidiary, affiliate, suc-
13 cessor, or assignee of an entity described in
14 subparagraph (A), (B), (C), or (D); or

15 “(F) an officer, employee, or agent of an
16 entity described in subparagraph (A), (B), (C),
17 (D), or (E).

18 “(7) INTELLIGENCE COMMUNITY.—The term
19 ‘intelligence community’ has the meaning given the
20 term in section 3(4) of the National Security Act of
21 1947 (50 U.S.C. 401a(4)).

22 “(8) PERSON.—The term ‘person’ means—

23 “(A) an electronic communication service
24 provider; or

1 “(B) a landlord, custodian, or other person
2 who may be authorized or required to furnish
3 assistance pursuant to—

4 “(i) an order of the court established
5 under section 103(a) directing such assist-
6 ance;

7 “(ii) a certification in writing under
8 section 2511(2)(a)(ii)(B) or 2709(b) of
9 title 18, United States Code; or

10 “(iii) a directive under section
11 102(a)(4), 105B(e), as added by section 2
12 of the Protect America Act of 2007 (Public
13 Law 110-55), or 702(h).

14 “(9) STATE.—The term ‘State’ means any
15 State, political subdivision of a State, the Common-
16 wealth of Puerto Rico, the District of Columbia, and
17 any territory or possession of the United States, and
18 includes any officer, public utility commission, or
19 other body authorized to regulate an electronic com-
20 munication service provider.

21 **“SEC. 802. PROCEDURES FOR IMPLEMENTING STATUTORY**
22 **DEFENSES.**

23 “(a) REQUIREMENT FOR CERTIFICATION.—Notwith-
24 standing any other provision of law, a civil action may not
25 lie or be maintained in a Federal or State court against

1 any person for providing assistance to an element of the
2 intelligence community, and shall be promptly dismissed,
3 if the Attorney General certifies to the district court of
4 the United States in which such action is pending that—

5 “(1) any assistance by that person was provided
6 pursuant to an order of the court established under
7 section 103(a) directing such assistance;

8 “(2) any assistance by that person was provided
9 pursuant to a certification in writing under section
10 2511(2)(a)(ii)(B) or 2709(b) of title 18, United
11 States Code;

12 “(3) any assistance by that person was provided
13 pursuant to a directive under section 102(a)(4),
14 105B(e), as added by section 2 of the Protect Amer-
15 ica Act of 2007 (Public Law 110-55), or 702(h) di-
16 recting such assistance;

17 “(4) in the case of a covered civil action, the as-
18 sistance alleged to have been provided by the elec-
19 tronic communication service provider was—

20 “(A) in connection with an intelligence ac-
21 tivity involving communications that was—

22 “(i) authorized by the President dur-
23 ing the period beginning on September 11,
24 2001, and ending on January 17, 2007;
25 and

1 “(ii) designed to detect or prevent a
2 terrorist attack, or activities in preparation
3 for a terrorist attack, against the United
4 States; and

5 “(B) the subject of a written request or di-
6 rective, or a series of written requests or direc-
7 tives, from the Attorney General or the head of
8 an element of the intelligence community (or
9 the deputy of such person) to the electronic
10 communication service provider indicating that
11 the activity was—

12 “(i) authorized by the President; and

13 “(ii) determined to be lawful; or

14 “(5) the person did not provide the alleged as-
15 sistance.

16 “(b) JUDICIAL REVIEW.—

17 “(1) REVIEW OF CERTIFICATIONS.—A certifi-
18 cation under subsection (a) shall be given effect un-
19 less the court finds that such certification is not
20 supported by substantial evidence provided to the
21 court pursuant to this section.

22 “(2) SUPPLEMENTAL MATERIALS.—In its re-
23 view of a certification under subsection (a), the
24 court may examine the court order, certification,
25 written request, or directive described in subsection

1 (a) and any relevant court order, certification, writ-
2 ten request, or directive submitted pursuant to sub-
3 section (d).

4 “(c) LIMITATIONS ON DISCLOSURE.—If the Attorney
5 General files a declaration under section 1746 of title 28,
6 United States Code, that disclosure of a certification made
7 pursuant to subsection (a) or the supplemental materials
8 provided pursuant to subsection (b) or (d) would harm the
9 national security of the United States, the court shall—

10 “(1) review such certification and the supple-
11 mental materials in camera and ex parte; and

12 “(2) limit any public disclosure concerning such
13 certification and the supplemental materials, includ-
14 ing any public order following such in camera and
15 ex parte review, to a statement as to whether the
16 case is dismissed and a description of the legal
17 standards that govern the order, without disclosing
18 the paragraph of subsection (a) that is the basis for
19 the certification.

20 “(d) ROLE OF THE PARTIES.—Any plaintiff or de-
21 fendant in a civil action may submit any relevant court
22 order, certification, written request, or directive to the dis-
23 trict court referred to in subsection (a) for review and
24 shall be permitted to participate in the briefing or argu-
25 ment of any legal issue in a judicial proceeding conducted

1 pursuant to this section, but only to the extent that such
2 participation does not require the disclosure of classified
3 information to such party. To the extent that classified
4 information is relevant to the proceeding or would be re-
5 vealed in the determination of an issue, the court shall
6 review such information in camera and ex parte, and shall
7 issue any part of the court's written order that would re-
8 veal classified information in camera and ex parte and
9 maintain such part under seal.

10 “(e) NONDELEGATION.—The authority and duties of
11 the Attorney General under this section shall be performed
12 by the Attorney General (or Acting Attorney General) or
13 the Deputy Attorney General.

14 “(f) APPEAL.—The courts of appeals shall have juris-
15 diction of appeals from interlocutory orders of the district
16 courts of the United States granting or denying a motion
17 to dismiss or for summary judgment under this section.

18 “(g) REMOVAL.—A civil action against a person for
19 providing assistance to an element of the intelligence com-
20 munity that is brought in a State court shall be deemed
21 to arise under the Constitution and laws of the United
22 States and shall be removable under section 1441 of title
23 28, United States Code.

24 “(h) RELATIONSHIP TO OTHER LAWS.—Nothing in
25 this section shall be construed to limit any otherwise avail-

1 able immunity, privilege, or defense under any other provi-
2 sion of law.

3 “(i) **APPLICABILITY.**—This section shall apply to a
4 civil action pending on or filed after the date of the enact-
5 ment of the FISA Amendments Act of 2008.

6 **“SEC. 803. PREEMPTION.**

7 “(a) **IN GENERAL.**—No State shall have authority
8 to—

9 “(1) conduct an investigation into an electronic
10 communication service provider’s alleged assistance
11 to an element of the intelligence community;

12 “(2) require through regulation or any other
13 means the disclosure of information about an elec-
14 tronic communication service provider’s alleged as-
15 sistance to an element of the intelligence community;

16 “(3) impose any administrative sanction on an
17 electronic communication service provider for assist-
18 ance to an element of the intelligence community; or

19 “(4) commence or maintain a civil action or
20 other proceeding to enforce a requirement that an
21 electronic communication service provider disclose
22 information concerning alleged assistance to an ele-
23 ment of the intelligence community.

1 “(b) SUITS BY THE UNITED STATES.—The United
2 States may bring suit to enforce the provisions of this sec-
3 tion.

4 “(c) JURISDICTION.—The district courts of the
5 United States shall have jurisdiction over any civil action
6 brought by the United States to enforce the provisions of
7 this section.

8 “(d) APPLICATION.—This section shall apply to any
9 investigation, action, or proceeding that is pending on or
10 commenced after the date of the enactment of the FISA
11 Amendments Act of 2008.

12 **“SEC. 804. REPORTING.**

13 “(a) SEMIANNUAL REPORT.—Not less frequently
14 than once every 6 months, the Attorney General shall, in
15 a manner consistent with national security, the Rules of
16 the House of Representatives, the Standing Rules of the
17 Senate, and Senate Resolution 400 of the 94th Congress
18 or any successor Senate resolution, fully inform the con-
19 gressional intelligence committees, the Committee on the
20 Judiciary of the Senate, and the Committee on the Judici-
21 ary of the House of Representatives concerning the imple-
22 mentation of this title.

23 “(b) CONTENT.—Each report made under subsection
24 (a) shall include—

25 “(1) any certifications made under section 802;

1 “(2) a description of the judicial review of the
2 certifications made under section 802; and

3 “(3) any actions taken to enforce the provisions
4 of section 803.”.

5 **SEC. 202. TECHNICAL AMENDMENTS.**

6 The table of contents in the first section of the For-
7 eign Intelligence Surveillance Act of 1978 (50 U.S.C.
8 1801 et seq.), as amended by section 101(b), is further
9 amended by adding at the end the following:

 “TITLE VIII—PROTECTION OF PERSONS ASSISTING THE
 GOVERNMENT

 “Sec. 801. Definitions.

 “Sec. 802. Procedures for implementing statutory defenses.

 “Sec. 803. Preemption.

 “Sec. 804. Reporting.”.

10 **TITLE III—REVIEW OF PREVIOUS**
11 **ACTIONS**

12 **SEC. 301. REVIEW OF PREVIOUS ACTIONS.**

13 (a) DEFINITIONS.—In this section:

14 (1) APPROPRIATE COMMITTEES OF CON-
15 GRESS.—The term “appropriate committees of Con-
16 gress” means—

17 (A) the Select Committee on Intelligence
18 and the Committee on the Judiciary of the Sen-
19 ate; and

20 (B) the Permanent Select Committee on
21 Intelligence and the Committee on the Judici-
22 ary of the House of Representatives.

1 (2) FOREIGN INTELLIGENCE SURVEILLANCE
2 COURT.—The term “Foreign Intelligence Surveil-
3 lance Court” means the court established under sec-
4 tion 103(a) of the Foreign Intelligence Surveillance
5 Act of 1978 (50 U.S.C. 1803(a)).

6 (3) PRESIDENT’S SURVEILLANCE PROGRAM AND
7 PROGRAM.—The terms “President’s Surveillance
8 Program” and “Program” mean the intelligence ac-
9 tivity involving communications that was authorized
10 by the President during the period beginning on
11 September 11, 2001, and ending on January 17,
12 2007, including the program referred to by the
13 President in a radio address on December 17, 2005
14 (commonly known as the Terrorist Surveillance Pro-
15 gram).

16 (b) REVIEWS.—

17 (1) REQUIREMENT TO CONDUCT.—The Inspec-
18 tors General of the Department of Justice, the Of-
19 fice of the Director of National Intelligence, the Na-
20 tional Security Agency, the Department of Defense,
21 and any other element of the intelligence community
22 that participated in the President’s Surveillance Pro-
23 gram, shall complete a comprehensive review of, with
24 respect to the oversight authority and responsibility
25 of each such Inspector General—

1 (A) all of the facts necessary to describe
2 the establishment, implementation, product, and
3 use of the product of the Program;

4 (B) access to legal reviews of the Program
5 and access to information about the Program;

6 (C) communications with, and participa-
7 tion of, individuals and entities in the private
8 sector related to the Program;

9 (D) interaction with the Foreign Intel-
10 ligence Surveillance Court and transition to
11 court orders related to the Program; and

12 (E) any other matters identified by any
13 such Inspector General that would enable that
14 Inspector General to complete a review of the
15 Program, with respect to such Department or
16 element.

17 (2) COOPERATION AND COORDINATION.—

18 (A) COOPERATION.—Each Inspector Gen-
19 eral required to conduct a review under para-
20 graph (1) shall—

21 (i) work in conjunction, to the extent
22 practicable, with any other Inspector Gen-
23 eral required to conduct such a review; and

24 (ii) utilize, to the extent practicable,
25 and not unnecessarily duplicate or delay,

1 such reviews or audits that have been com-
2 pleted or are being undertaken by any such
3 Inspector General or by any other office of
4 the Executive Branch related to the Pro-
5 gram.

6 (B) INTEGRATION OF OTHER REVIEWS.—

7 The Counsel of the Office of Professional Re-
8 sponsibility of the Department of Justice shall
9 provide the report of any investigation con-
10 ducted by such Office on matters relating to the
11 Program, including any investigation of the
12 process through which legal reviews of the Pro-
13 gram were conducted and the substance of such
14 reviews, to the Inspector General of the Depart-
15 ment of Justice, who shall integrate the factual
16 findings and conclusions of such investigation
17 into its review.

18 (C) COORDINATION.—The Inspectors Gen-
19 eral shall designate one of the Inspectors Gen-
20 eral required to conduct a review under para-
21 graph (1) that is appointed by the President, by
22 and with the advice and consent of the Senate,
23 to coordinate the conduct of the reviews and the
24 preparation of the reports.

25 (c) REPORTS.—

1 (1) PRELIMINARY REPORTS.—Not later than 60
2 days after the date of the enactment of this Act, the
3 Inspectors General of the Department of Justice, the
4 Office of the Director of National Intelligence, the
5 National Security Agency, the Department of De-
6 fense, and any other Inspector General required to
7 conduct a review under subsection (b)(1), shall sub-
8 mit to the appropriate committees of Congress an
9 interim report that describes the planned scope of
10 such review.

11 (2) FINAL REPORT.—Not later than 1 year
12 after the date of the enactment of this Act, the In-
13 spectors General of the Department of Justice, the
14 Office of the Director of National Intelligence, the
15 National Security Agency, the Department of De-
16 fense, and any other Inspector General required to
17 conduct a review under subsection (b)(1), shall sub-
18 mit to the appropriate committees of Congress, in a
19 manner consistent with national security, a com-
20 prehensive report on such reviews that includes any
21 recommendations of any such Inspectors General
22 within the oversight authority and responsibility of
23 any such Inspector General with respect to the re-
24 views.

1 (3) FORM.—A report under this subsection
2 shall be submitted in unclassified form, but may in-
3 clude a classified annex. The unclassified report
4 shall not disclose the name or identity of any indi-
5 vidual or entity of the private sector that partici-
6 pated in the Program or with whom there was com-
7 munication about the Program, to the extent that
8 information is classified.

9 (d) RESOURCES.—

10 (1) EXPEDITED SECURITY CLEARANCE.—The
11 Director of National Intelligence shall ensure that
12 the process for the investigation and adjudication of
13 an application by an Inspector General or any ap-
14 propriate staff of an Inspector General for a security
15 clearance necessary for the conduct of the review
16 under subsection (b)(1) is carried out as expedi-
17 tiously as possible.

18 (2) ADDITIONAL PERSONNEL FOR THE INSPEC-
19 TORS GENERAL.—An Inspector General required to
20 conduct a review under subsection (b)(1) and submit
21 a report under subsection (c) is authorized to hire
22 such additional personnel as may be necessary to
23 carry out such review and prepare such report in a
24 prompt and timely manner. Personnel authorized to
25 be hired under this paragraph—

1 (A) shall perform such duties relating to
2 such a review as the relevant Inspector General
3 shall direct; and

4 (B) are in addition to any other personnel
5 authorized by law.

6 (3) TRANSFER OF PERSONNEL.—The Attorney
7 General, the Secretary of Defense, the Director of
8 National Intelligence, the Director of the National
9 Security Agency, or the head of any other element
10 of the intelligence community may transfer per-
11 sonnel to the relevant Office of the Inspector Gen-
12 eral required to conduct a review under subsection
13 (b)(1) and submit a report under subsection (c) and,
14 in addition to any other personnel authorized by law,
15 are authorized to fill any vacancy caused by such a
16 transfer. Personnel transferred under this paragraph
17 shall perform such duties relating to such review as
18 the relevant Inspector General shall direct.

19 **TITLE IV—OTHER PROVISIONS**

20 **SEC. 401. SEVERABILITY.**

21 If any provision of this Act, any amendment made
22 by this Act, or the application thereof to any person or
23 circumstances is held invalid, the validity of the remainder
24 of the Act, of any such amendments, and of the applica-

1 tion of such provisions to other persons and circumstances
2 shall not be affected thereby.

3 **SEC. 402. EFFECTIVE DATE.**

4 Except as provided in section 404, the amendments
5 made by this Act shall take effect on the date of the enact-
6 ment of this Act.

7 **SEC. 403. REPEALS.**

8 (a) **REPEAL OF PROTECT AMERICA ACT OF 2007**
9 **PROVISIONS.—**

10 (1) **AMENDMENTS TO FISA.—**

11 (A) **IN GENERAL.—**Except as provided in
12 section 404, sections 105A, 105B, and 105C of
13 the Foreign Intelligence Surveillance Act of
14 1978 (50 U.S.C. 1805a, 1805b, and 1805c) are
15 repealed.

16 (B) **TECHNICAL AND CONFORMING AMEND-**
17 **MENTS.—**

18 (i) **TABLE OF CONTENTS.—**The table
19 of contents in the first section of the For-
20 eign Intelligence Surveillance Act of 1978
21 (50 U.S.C. 1801 et seq.) is amended by
22 striking the items relating to sections
23 105A, 105B, and 105C.

24 (ii) **CONFORMING AMENDMENTS.—**Ex-
25 cept as provided in section 404, section

1 103(e) of the Foreign Intelligence Surveil-
2 lance Act of 1978 (50 U.S.C. 1803(e)) is
3 amended—

4 (I) in paragraph (1), by striking
5 “105B(h) or 501(f)(1)” and inserting
6 “501(f)(1) or 702(h)(4)”; and

7 (II) in paragraph (2), by striking
8 “105B(h) or 501(f)(1)” and inserting
9 “501(f)(1) or 702(h)(4)”.

10 (2) REPORTING REQUIREMENTS.—Except as
11 provided in section 404, section 4 of the Protect
12 America Act of 2007 (Public Law 110-55; 121 Stat.
13 555) is repealed.

14 (3) TRANSITION PROCEDURES.—Except as pro-
15 vided in section 404, subsection (b) of section 6 of
16 the Protect America Act of 2007 (Public Law 110-
17 55; 121 Stat. 556) is repealed.

18 (b) FISA AMENDMENTS ACT OF 2008.—

19 (1) IN GENERAL.—Except as provided in sec-
20 tion 404, effective December 31, 2012, title VII of
21 the Foreign Intelligence Surveillance Act of 1978, as
22 amended by section 101(a), is repealed.

23 (2) TECHNICAL AND CONFORMING AMEND-
24 MENTS.—Effective December 31, 2012—

1 (A) the table of contents in the first sec-
2 tion of such Act (50 U.S.C. 1801 et seq.) is
3 amended by striking the items related to title
4 VII;

5 (B) except as provided in section 404, sec-
6 tion 601(a)(1) of such Act (50 U.S.C.
7 1871(a)(1)) is amended to read as such section
8 read on the day before the date of the enact-
9 ment of this Act; and

10 (C) except as provided in section 404, sec-
11 tion 2511(2)(a)(ii)(A) of title 18, United States
12 Code, is amended by striking “or a court order
13 pursuant to section 704 of the Foreign Intel-
14 ligence Surveillance Act of 1978”.

15 **SEC. 404. TRANSITION PROCEDURES.**

16 (a) **TRANSITION PROCEDURES FOR PROTECT AMER-**
17 **ICA ACT OF 2007 PROVISIONS.—**

18 (1) **CONTINUED EFFECT OF ORDERS, AUTHOR-**
19 **IZATIONS, DIRECTIVES.—**Except as provided in para-
20 graph (7), notwithstanding any other provision of
21 law, any order, authorization, or directive issued or
22 made pursuant to section 105B of the Foreign Intel-
23 ligence Surveillance Act of 1978, as added by section
24 2 of the Protect America Act of 2007 (Public Law
25 110-55; 121 Stat. 552), shall continue in effect until

1 the expiration of such order, authorization, or direc-
2 tive.

3 (2) APPLICABILITY OF PROTECT AMERICA ACT
4 OF 2007 TO CONTINUED ORDERS, AUTHORIZATIONS,
5 DIRECTIVES.—Notwithstanding any other provision
6 of this Act, any amendment made by this Act, or the
7 Foreign Intelligence Surveillance Act of 1978 (50
8 U.S.C. 1801 et seq.)—

9 (A) subject to paragraph (3), section 105A
10 of such Act, as added by section 2 of the Pro-
11 tect America Act of 2007 (Public Law 110-55;
12 121 Stat. 552), shall continue to apply to any
13 acquisition conducted pursuant to an order, au-
14 thorization, or directive referred to in para-
15 graph (1); and

16 (B) sections 105B and 105C of the For-
17 eign Intelligence Surveillance Act of 1978, as
18 added by sections 2 and 3, respectively, of the
19 Protect America Act of 2007, shall continue to
20 apply with respect to an order, authorization, or
21 directive referred to in paragraph (1) until the
22 later of—

23 (i) the expiration of such order, au-
24 thorization, or directive; or

1 (ii) the date on which final judgment
2 is entered for any petition or other litiga-
3 tion relating to such order, authorization,
4 or directive.

5 (3) USE OF INFORMATION.—Information ac-
6 quired from an acquisition conducted pursuant to an
7 order, authorization, or directive referred to in para-
8 graph (1) shall be deemed to be information ac-
9 quired from an electronic surveillance pursuant to
10 title I of the Foreign Intelligence Surveillance Act of
11 1978 (50 U.S.C. 1801 et seq.) for purposes of sec-
12 tion 106 of such Act (50 U.S.C. 1806), except for
13 purposes of subsection (j) of such section.

14 (4) PROTECTION FROM LIABILITY.—Subsection
15 (l) of section 105B of the Foreign Intelligence Sur-
16 veillance Act of 1978, as added by section 2 of the
17 Protect America Act of 2007, shall continue to apply
18 with respect to any directives issued pursuant to
19 such section 105B.

20 (5) JURISDICTION OF FOREIGN INTELLIGENCE
21 SURVEILLANCE COURT.—Notwithstanding any other
22 provision of this Act or of the Foreign Intelligence
23 Surveillance Act of 1978 (50 U.S.C. 1801 et seq.),
24 section 103(e) of the Foreign Intelligence Surveil-
25 lance Act (50 U.S.C. 1803(e)), as amended by sec-

1 tion 5(a) of the Protect America Act of 2007 (Public
2 Law 110-55; 121 Stat. 556), shall continue to apply
3 with respect to a directive issued pursuant to section
4 105B of the Foreign Intelligence Surveillance Act of
5 1978, as added by section 2 of the Protect America
6 Act of 2007, until the later of—

7 (A) the expiration of all orders, authoriza-
8 tions, or directives referred to in paragraph (1);
9 or

10 (B) the date on which final judgment is
11 entered for any petition or other litigation relat-
12 ing to such order, authorization, or directive.

13 (6) REPORTING REQUIREMENTS.—

14 (A) CONTINUED APPLICABILITY.—Not-
15 withstanding any other provision of this Act,
16 any amendment made by this Act, the Protect
17 America Act of 2007 (Public Law 110-55), or
18 the Foreign Intelligence Surveillance Act of
19 1978 (50 U.S.C. 1801 et seq.), section 4 of the
20 Protect America Act of 2007 shall continue to
21 apply until the date that the certification de-
22 scribed in subparagraph (B) is submitted.

23 (B) CERTIFICATION.—The certification de-
24 scribed in this subparagraph is a certification—

25 (i) made by the Attorney General;

1 (ii) submitted as part of a semi-an-
2 nual report required by section 4 of the
3 Protect America Act of 2007;

4 (iii) that states that there will be no
5 further acquisitions carried out under sec-
6 tion 105B of the Foreign Intelligence Sur-
7 veillance Act of 1978, as added by section
8 2 of the Protect America Act of 2007,
9 after the date of such certification; and

10 (iv) that states that the information
11 required to be included under such section
12 4 relating to any acquisition conducted
13 under such section 105B has been included
14 in a semi-annual report required by such
15 section 4.

16 (7) REPLACEMENT OF ORDERS, AUTHORIZA-
17 TIONS, AND DIRECTIVES.—

18 (A) IN GENERAL.—If the Attorney General
19 and the Director of National Intelligence seek
20 to replace an authorization issued pursuant to
21 section 105B of the Foreign Intelligence Sur-
22 veillance Act of 1978, as added by section 2 of
23 the Protect America Act of 2007 (Public Law
24 110-55), with an authorization under section
25 702 of the Foreign Intelligence Surveillance Act

1 of 1978 (as added by section 101(a) of this
2 Act), the Attorney General and the Director of
3 National Intelligence shall, to the extent prac-
4 ticable, submit to the Foreign Intelligence Sur-
5 veillance Court (as such term is defined in sec-
6 tion 701(b)(2) of such Act (as so added)) a cer-
7 tification prepared in accordance with sub-
8 section (g) of such section 702 and the proce-
9 dures adopted in accordance with subsections
10 (d) and (e) of such section 702 at least 30 days
11 before the expiration of such authorization.

12 (B) CONTINUATION OF EXISTING OR-
13 DERS.—If the Attorney General and the Direc-
14 tor of National Intelligence seek to replace an
15 authorization made pursuant to section 105B of
16 the Foreign Intelligence Surveillance Act of
17 1978, as added by section 2 of the Protect
18 America Act of 2007 (Public Law 110-55; 121
19 Stat. 522), by filing a certification in accord-
20 ance with subparagraph (A), that authorization,
21 and any directives issued thereunder and any
22 order related thereto, shall remain in effect,
23 notwithstanding the expiration provided for in
24 subsection (a) of such section 105B, until the
25 Foreign Intelligence Surveillance Court (as such

1 term is defined in section 701(b)(2) of the For-
2 eign Intelligence Surveillance Act of 1978 (as
3 so added)) issues an order with respect to that
4 certification under section 702(i)(3) of such Act
5 (as so added) at which time the provisions of
6 that section and of section 702(i)(4) of such
7 Act (as so added) shall apply.

8 (8) EFFECTIVE DATE.—Paragraphs (1)
9 through (7) shall take effect as if enacted on August
10 5, 2007.

11 (b) TRANSITION PROCEDURES FOR FISA AMEND-
12 MENTS ACT OF 2008 PROVISIONS.—

13 (1) ORDERS IN EFFECT ON DECEMBER 31,
14 2012.—Notwithstanding any other provision of this
15 Act, any amendment made by this Act, or the For-
16 eign Intelligence Surveillance Act of 1978 (50
17 U.S.C. 1801 et seq.), any order, authorization, or di-
18 rective issued or made under title VII of the Foreign
19 Intelligence Surveillance Act of 1978, as amended by
20 section 101(a), shall continue in effect until the date
21 of the expiration of such order, authorization, or di-
22 rective.

23 (2) APPLICABILITY OF TITLE VII OF FISA TO
24 CONTINUED ORDERS, AUTHORIZATIONS, DIREC-
25 TIVES.—Notwithstanding any other provision of this

1 Act, any amendment made by this Act, or the For-
2 eign Intelligence Surveillance Act of 1978 (50
3 U.S.C. 1801 et seq.), with respect to any order, au-
4 thorization, or directive referred to in paragraph (1),
5 title VII of such Act, as amended by section 101(a),
6 shall continue to apply until the later of—

7 (A) the expiration of such order, authoriza-
8 tion, or directive; or

9 (B) the date on which final judgment is
10 entered for any petition or other litigation relat-
11 ing to such order, authorization, or directive.

12 (3) CHALLENGE OF DIRECTIVES; PROTECTION
13 FROM LIABILITY; USE OF INFORMATION.—Notwith-
14 standing any other provision of this Act or of the
15 Foreign Intelligence Surveillance Act of 1978 (50
16 U.S.C. 1801 et seq.)—

17 (A) section 103(e) of such Act, as amended
18 by section 403(a)(1)(B)(ii), shall continue to
19 apply with respect to any directive issued pur-
20 suant to section 702(h) of such Act, as added
21 by section 101(a);

22 (B) section 702(h)(3) of such Act (as so
23 added) shall continue to apply with respect to
24 any directive issued pursuant to section 702(h)
25 of such Act (as so added);

1 (C) section 703(e) of such Act (as so
2 added) shall continue to apply with respect to
3 an order or request for emergency assistance
4 under that section;

5 (D) section 706 of such Act (as so added)
6 shall continue to apply to an acquisition con-
7 ducted under section 702 or 703 of such Act
8 (as so added); and

9 (E) section 2511(2)(a)(ii)(A) of title 18,
10 United States Code, as amended by section
11 101(c)(1), shall continue to apply to an order
12 issued pursuant to section 704 of the Foreign
13 Intelligence Surveillance Act of 1978, as added
14 by section 101(a).

15 (4) REPORTING REQUIREMENTS.—

16 (A) CONTINUED APPLICABILITY.—Not-
17 withstanding any other provision of this Act or
18 of the Foreign Intelligence Surveillance Act of
19 1978 (50 U.S.C. 1801 et seq.), section 601(a)
20 of such Act (50 U.S.C. 1871(a)), as amended
21 by section 101(c)(2), and sections 702(l) and
22 707 of such Act, as added by section 101(a),
23 shall continue to apply until the date that the
24 certification described in subparagraph (B) is
25 submitted.

1 (B) CERTIFICATION.—The certification de-
2 scribed in this subparagraph is a certification—

3 (i) made by the Attorney General;

4 (ii) submitted to the Select Committee
5 on Intelligence of the Senate, the Perma-
6 nent Select Committee on Intelligence of
7 the House of Representatives, and the
8 Committees on the Judiciary of the Senate
9 and the House of Representatives;

10 (iii) that states that there will be no
11 further acquisitions carried out under title
12 VII of the Foreign Intelligence Surveil-
13 lance Act of 1978, as amended by section
14 101(a), after the date of such certification;
15 and

16 (iv) that states that the information
17 required to be included in a review, assess-
18 ment, or report under section 601 of such
19 Act, as amended by section 101(c), or sec-
20 tion 702(l) or 707 of such Act, as added
21 by section 101(a), relating to any acquisi-
22 tion conducted under title VII of such Act,
23 as amended by section 101(a), has been in-
24 cluded in a review, assessment, or report
25 under such section 601, 702(l), or 707.

1 (5) TRANSITION PROCEDURES CONCERNING
2 THE TARGETING OF UNITED STATES PERSONS OVER-
3 SEAS.—Any authorization in effect on the date of
4 enactment of this Act under section 2.5 of Executive
5 Order 12333 to intentionally target a United States
6 person reasonably believed to be located outside the
7 United States shall continue in effect, and shall con-
8 stitute a sufficient basis for conducting such an ac-
9 quisition targeting a United States person located
10 outside the United States until the earlier of—
11 (A) the date that authorization expires; or
12 (B) the date that is 90 days after the date
13 of the enactment of this Act.